

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>CHRIS CARTY,</b>	)	
Plaintiff	)	Civil Action No.: 7:13cv00533
	)	
v.	)	
	)	
	)	<b><u>MEMORANDUM ORDER AND</u></b>
	)	<b><u>REPORT AND RECOMMENDATION</u></b>
<b>V. PHIPPS, et al.,</b>	)	By: PAMELA MEADE SARGENT
Defendants	)	United States Magistrate Judge

The pro se plaintiff, Chris Carty, is a Virginia Department of Corrections, (“VDOC”), inmate currently housed at Red Onion State Prison, (“ROSP”). This case is before the court on the pro se plaintiff’s Motion For Leave To File An Amended Complaint, (Docket Item No. 16), (“Motion”), seeking leave to file an Amended Complaint to add a conspiracy claim against the defendants. Based on the arguments and representations of the plaintiff, and for the reasons stated herein, the Motion is **GRANTED**. Despite the amendment, the undersigned continues to recommend that this action be dismissed sua sponte pursuant to 28 U.S.C. § 1915A(b)(1) because it fails to state a claim upon which relief may be granted.

Pursuant to Federal Rules of Civil Procedure Rule 15, a party may amend his pleading once as a matter of course within 21 days of service. FED. R. CIV. P. 15(a). In this case, service has not yet been accomplished on the defendants. Therefore, the plaintiff is entitled to have his Complaint amended as requested in the Motion. The amendment, however, does not save the plaintiff’s claims from being dismissed as recommended in my December 30, 2013, Report and Recommendation, (Docket Item No. 15).

As stated above, plaintiff seeks to add a conspiracy claim against the defendants. In essence, Carty now alleges that the defendants conspired to change his medical diet. As stated in the December 30, 2013, Report and Recommendation, a prisoner's disagreement with medical personnel over the course of his medical treatment fails to state a claim "unless exceptional circumstances are alleged." *Wright v. Collins*, 766 F.2d 841, 849 (4<sup>th</sup> Cir. 1985) (mere disagreement between inmate and physician concerning proper treatment insufficient under § 1983). Therefore, I continue to recommended that the plaintiff's claim be dismissed for failing to state a claim upon which relief may be granted.

### **PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Carty's Complaint is amended as set forth in the Motion;
2. Carty's Complaint, as amended, fails to state a claim upon which relief may be granted against the defendants; and
2. Carty's Complaint, as amended, should be dismissed.

### **RECOMMENDED DISPOSITION**

Based on the above-stated reasons, I recommend that the court dismiss Carty's Complaint, as amended, in its entirety.

### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file written objection to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable Samuel G. Wilson, United States District Judge.

Insofar as this document contains an order granting the plaintiff's Motion For Leave To File An Amended Complaint, (Docket Item No. 16), notice is hereby given to the parties of the provisions of Federal Rules of Civil Procedure Rule 72:

...A party may serve and file objections to [this Order] within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Failure to file timely written objections to this Order within 14 days could waive appellate review.

The Clerk is directed to send a certified copy of this Memorandum Order and Report and Recommendation to the pro se plaintiff and all counsel of record.

ENTERED: January 22, 2014.

/s/ *Pamela Meade Sargent*  
UNITED STATES MAGISTRATE JUDGE